IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 25087 of 2003

Between:

M/s. Nalamati Sea Foods (P) Ltd., Rep.by its Managing Director Mr.N.Janaki Ramaiah, 8-3-319/34, Sri Sai Sarathi Nagar, Yellareddyguda, Hyderabad.

... PETITIONER

AND

1 M/s. Eastern Power Distribution Company of A.P.,Ltd. Rep.by its Managing Director Visakhapatnam.
2 The Superintendent Engineer, Operation Circle,
Eastern Power Distribution Company of A.P.Ltd., Eluru,
West Godavari Dist, Andhra Pradesh.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction declaring the impugned proceedings SE/O/ELR/DE.T/AAE.T2/F.doc/D.No:494/2003 of the 2nd Respondent dated 06-11-2003 as arbitrary, illegal, without jurisdiction and contrary to the terms and conditions of supply and consequently set aside the same.

Counsel for the Petitioner: MR.P.GIRISH KUMAR

Counsel for the Respondents: MR.M.SUBBHA RAO

The Court made the following order:

ORDER:

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Petitioner purchased Shrimp Processing Plant (Cold Storage) situated at Seesali Village, Kalla Mandal, West Godavari District from one M/s. Sudarsan International, a partnership firm, under a registered Sale Deed dated 30.06.1999. The Plant was connected with High Tension Electrical Supply vide Service ELR No.328, which was subsequently transferred in the name of the petitioner. Petitioner has been running the Plant ever since the date of purchase and paying Electrical charges regularly and there were no arrears.

While so, the second respondent-Superintendent Engineer, Operation Circle, Eluru, issued proceedings dated 31.12.2002 to the petitioner's vendor M/s. Surdarsan International stating that the service connection was inspected on 26.08.1999 and reviewed the consumption particulars and found that for the period from 14.05.1999 to 03.07.1999 supply of electricity was made direct as the metering cubicle was defective. The average units built on the basis of the average consumption of February, March and April 1999 is not correct and therefore back billing is finalized taking into consideration the consumption recorded during July 1999.

Having stated so, a revised bill was issued for an amount of Rs.2,38,529/- based on the average of the subsequent period of three months of May, June and July 1999 by deducting the bills paid previously. Aggrieved by the said notice petitioner filed WP.No.3416 of 2003. This Court while setting aside the impugned proceedings directed the petitioner to file its objections, treating the impugned proceedings as show cause notice and on receipt of such objections, the second respondent is directed to consider the same in accordance with law and pass appropriate orders afresh. Any amount deposited by the petitioner pursuant to the interim order shall be subject to the final orders that may be passed.

After obtaining such order the petitioner filed a representation stating that as per the terms and conditions of supply, in case of defective meter, average consumption may be proposed for the months during which the meter was defective based on the average consumption of the preceding three months. It is further stated that the petitioner already paid the average consumption of the preceding three months for the period in question and the petitioner purchased the Plant only on 30.06.1999 and therefore, the revised back billing is illegal and unsustainable.

But the second respondent while rejecting the said objections passed impugned order dated 06.11.2003 stating that as per the stipulated terms and conditions of supply the average consumption of preceding three months have to be proposed for the months in which the meter is defective provided the working conditions and the consumption pattern of the consumption is uniform and comparable to that of the defective period. If the working conditions are not similar and comparative of the proposed three months, the average assessment, for the back billing, shall be made on the basis on any consecutive three months. No reasons have been stated as to how the conditions were different.

Having collected the consumption charges based on the preceding three months the respondents have again considered the objections of the petitioner and rejected the same and passed the impugned order which is similar to that of the earlier. The impugned order is passed, admittedly, on the basis of the subsequent consumption but not on the basis of preceding three months.

Therefore, the only question that arises for consideration as to whether as per the terms and conditions of supply the respondents are empowered to collect the charges

based on the average consumption of the subsequent period of three months in respect of the consumption when the meter was defective.

As per the terms and conditions of supply, at Para 22.3.3, where supply to the consumer has been given without a meter or where the meter fixed is found defective or to have ceased to function and no pilferage of energy or malpractice is suspected, the quantity of electricity supplied during the period when the meter was not installed or the mater installed was defective, the consumption shall be arrived as mentioned in Paras 22.3.3.1, 22.3.3.2 and 22.3.3.3. The procedure contemplated under the said conditions of the meter reading was already applied to the petitioner and the differential charges/bills were already collected. Having applied the conditions rightly, the respondents have changed their method and manner of calculation and determined the differential charges based on the subsequent period of three months, which is not at all contemplated under the terms and conditions of supply.

Therefore, I am of the opinion that the impugned order is illegal and contrary to the terms and conditions of supply under Paras 22.3.3, 22.3.3.1, 22.3.3.2 and 22.3.3.3.

Accordingly, the impugned order is set aside and writ petition is allowed. The amount paid by the petitioner pursuant to the interim direction towards the said disputed consumption charges may be adjusted against the future bills of the petitioner. No costs.

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V. ESWARAIAH, J

March 7, 2005

Note: Furnish copy in three days

(B/o)

Dsk

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Monday the Seventh day of March Two thousand and Five.

To

1 M/s. Eastern Power Distribution Company of A.P.,Ltd. Rep.by its Managing Director, Visakhapatnam.

2 The Superintendent Engineer, Operation Circle, Eastern Power Distribution Company of A.P.Ltd., Eluru, West Godavari Dist, Andhra Pradesh.

3 Two CD Copies